ing become operative. In action for rent accruing thereafter the tenant claimed to be released from the obligation to pay rent. *Held,* the change in law afforded no defense. *Imbeschied v. Lerner* (Mass., 1922), 135 N. E. 219.

The court said: "If the defendant desired to have protected himself from liability to pay rent, a clause for that purpose should have been inserted in the lease. He seeks to invoke the familiar rule that a contract which cannot be performed without violating the law is void. This is a good rule of law, but it is not applicable to the present case." If, however, the action had been by the landlord for breach of the tenant's covenant to use the premises only for the liquor business, it would seem clear the principle adverted to would have afforded a perfect defense. For a discussion of the problems involved and consideration of the cases, see 16 MICH. L. REV. 534.

NEGLIGENCE—LIABILITY OF SELLER TO THIRD PARTY IN REFERENCE TO A THING NOT INHERENTLY DANGEROUS.—Defendant, a dealer in gas and electrical appliances, sold a gas flatiron to a person who loaned it to plaintiff. While using the flatiron, plaintiff was severely burned by flames coming through the holes in its sides. Defendant did not know that flames would come from the sides of the flatiron. *Held,* plaintiff not entitled to recover, because the flatiron was not an inherently dangerous article. *Pitman v. Lynn Gas and Electric Co.* (Mass., 1922), 135 N. E. 223.

There was evidence that the iron was fundamentally defective, but the court refused to consider whether defendant was negligent because the general rule is that neither the seller nor manufacturer is liable for mere negligence to a third person with whom he has no contractual relations. *Winterbottom v. Wright,* 10 M. & W. 109; *Huset v. J. I. Case Threshing Machine Co.,* 120 Fed. 865; *Earl v. Lubbock,* (1905), I K. B. 253; *Tompkins v. Quaker Oats Co.,* 239 Mass. 147. According to the court, plaintiff did not make out a case coming within the well recognized exception to the above rule: that where defendant sells an article inherently dangerous to life or property, he may be liable to third parties. *Longmeid v. Holliday,* 6 Exch. 761; *Thomas v. Winchester,* 6 N. Y. 397; *McCaffrey v. Mossberg and G. Mfg. Co.,* 23 R. I. 381. A flatiron, said the court, when used for purposes for which it is intended, is not an article commonly recognized as dangerous to human life, even when used in connection with illuminating gas.

In *MacPherson v. Buick Motor Co.,* 217 N. Y. 382, a more liberal conception of an inherently article is entertained. The court reviewed the authorities at great length and in its well reasoned opinion said: "If the nature of the thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger." In accord with this liberalizing of the rule are: *Johnson v. Cadillac Motor Car Co.,* 261 Fed. 878; *Schubert v. Clark Co.,* 49 Minn. 331; *Woodward v. Miller,* 119 Ga. 618. These cases show a recent tendency in certain courts to ex-

tend the liability of a seller or manufacturer to third parties where an article not inherently dangerous becomes dangerous by reason of negligent preparation. The rule as laid down in the principal case is said (29 CYC. 477), to rest not on warranty, nor on privity of contract, but arises from a duty not to expose the public to danger. If this is so, it would seem that the public is as much exposed to danger when an article is made dangerous through defective construction, as when it is naturally so. The liability, it is submitted, rests in tort, not in contract, and if the *Buick* case is as good law as it is good sense, the court in the principal case should have submitted the question of the negligence of the defendant to the jury. See 18 MICH. L. REV. 676.

NUISANCE—WHAT CONSTITUTES A NUISANCE.—D's boiler plant was situated directly in the rear of P's dwelling. P complained of noise and vibration, and asked for injunctive relief and damages. The master found that there was no serious jarring or shaking, nor such loud and disturbing noises as to make the house uninhabitable. On the other hand, he found that P's dwelling "was not as desirable a place in which to live as it was before the boiler shop was built," and that the value of P's property had been detrimentally affected to the extent of $500. The trial court dismissed the bill upon these findings, but on appeal it was *held,* that P was entitled to $500 damages. *Sardo v. James Russel Boiler Wks. Co.,* (Mass., 1922), 135 N. E. 127.

Probably the decision of the court would not seem extraordinary upon a reading of the master's findings *in toto.* But if based solely upon the findings of the master as stated in the report (paraphrased above), the decision would seem to require quite an enlargement of our present conception of what constitutes an actionable nuisance. From earliest times to the present day, mere diminution in the value of P's property as a result of defendant's acts, has been held insufficient to constitute such acts a nuisance. *Harrison v. Good,* L. R. 11 Eq. Cas. 338; *Gibson v. Donk,* 7 Mo. App. 37; *Falloon v. Schilling,* 29 Kan. 292; *Duncan v. Hayes,* 22 N. J. Eq. 25. Such diminution in value is permitted as an element in fixing the amount of damages to be awarded, but the nuisance itself must be hypothecated upon other grounds. The last statement may have to be modified as to some of the recent "hospital" and "undertaking establishment" cases. A late and well considered case of this sort is *Cunningham v. Miller* (Wis., 1922), 189 N. W. 531. Notes discussing the recent cases appear in 18 MICH. L. REV. 246; 19 MICH. L. REV. 111, 450; and 20 MICH. L. REV. 457. See also 17 MICH. L. REV. 428, and 16 MICH. L. REV. 136. But none of these cases goes further than to consider the decrease in property value in connection with other elements which of themselves might be sufficient to support the holding. No such aid can be adduced in support of the holding in the principal case, for the only other element specifically stated, e. g. the finding that P's dwelling "was not as desirable a place in which to live," is so broad and indefinite as to be practicallly meaningless. Are we to assume, then, that Massachusetts has taken such a radical step as